IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11742 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANUBHAI JAYRAMBHAI MALI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR RC KODEKAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2001

ORAL JUDGEMENT

#. Heard learned advocate H.R.Prajapati on behalf of the petitioner and learned AGP Mr.R.C.Kodekar, on behalf of the respondent -State.

#. In the present petition the order of detention dated

19.10.2000 passed by Police Commissioner, Rajkot City under Section 3 of Sub-Clause (1) of PASA Act is challenged by the petitioner under Article 226 of the Constitution of India.

#. The learned advocate Mr.H.R.Prajapati has challenged the detention order on two grounds. One is that at the time of passing the detention order petitioner was in judicial custody . Second contention is that detaining authority has denied the right of making effective representation by way of not supplying the documents which are relied upon by the detaining authority at the time of passing the detention order against the present petitioner. The learned advocate further submitted that on behalf of the petitioner on 9.11.2000 certain documents were demanded for making effective representation, but, no documents were supplied to the petitioner inspite of the written demand made by the petitioner. Therefore, it amounts to denying the right of making effective representation which violates Article 22 Sub-Clause (5) of the Constitution of India.

#. This petition has been admitted by this Court on 9.11.2000 and thereafter matter has been adjourned from time to time. However, no reply has been filed by the respondent -State.

#. Learned AGP Mr R.C.Kodekar is not able to satisfy this Court that whether any document has been supplied to the petitioner after the demand was made by concerned advocate on behalf of the petitioner. Mr.Kodekar is also not able to justify the detention when the petitioner was in judicial custody.

#. I have heard the learned advocate appearing on behalf of respective parties. In respect of his contention that at the time of passing the detention order the petitioner was in judicial custody, and there was no cogent material before the detaining authority about likelihood of detenue being released on bail. Therefore, in absence of such satisfaction, the detention order cannot be sustained.

#. A view is taken by the Apex Court in case of Ramesh Yadav Vs. District Magistrate, Etah and others reported in 1985 Supreme Court Cases (Criminal page 514, wherein the Apex Court has observed that, `merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention under the National Security Act should not ordinarily be passed. If, the apprehension of the detaining authority was true,

the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be made'. In the case of Amritlal and others Vs. Union Govt. of India reported in 2001 (1) Supreme Court Cases 341. the Apex Court has observed that, `at the time of passing the detention order when detenue is already in jail then detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenue being released on bail and not merely about likelihood of his moving application for bail. In absence of such satisfaction, detention order cannot be sustained.'

#. Considering these two decisions of the Apex Court and in light of the observation made by the Apex Court, the ground of detention wherein there is no cogent material placed before the detaining authority and does not justify the satisfaction of the detaining authority that the petitioner has applied for bail application and there is likelihood of petitioner being released on bail. In ground of detention the detaining authority has not considered any material for coming to the conclusion that the petitioner is likely to be released and, therefore, in absence of such cogent material, satisfaction of the detaining authority is vitiated.

#. The learned advocate appearing on behalf of the petitioner has relied upon the decision of this Court in Spl.C.A. No.8906 of 2000 dated 13.10.2000 (Coram: A.L.Dave,J.). The learned advocate has raised contention that the several statements recorded under Section 161 of the Criminal Procedure Code were not supplied to the detenue and therefore a demand was made by the representation and documents were still not supplied, therefore the right of the petitioner of making effective representation is violated under Article 22 (5) of the Constitution of India. This aspect has been considered by this Court in above referred case in para -7. It is also necessary to note that the contention which has been raised by the learned advocate on behalf of the petitioner that the statement recorded by the concerned police authority under Section 161 of the Criminal Procedure Code were not supplied to the petitioner alongwith the ground of detention though the same was considered by the detaining authority against the present petitioner, while passing the detention order. Even though the demand was made by the petitioner before the detaining authority to supply the said documents, the same has not been supplied. This factual aspect has not been disputed by the respondent -State by filing necessary affidavit of detaining authority. The learned

AGP Mr.Kodekar is not able to make a specific statement as to whether document has been supplied or not. No affidavit-in-reply has been filed.

##. I have considered the submissions made by the learned advocate on behalf of the petitioner and have considered the submission of learned AGP. According to my opinion the order of detention is vitiated on the ground that at the time of passing the detention order the petitioner was in judicial custody and there was no cogent material placed before the detaining authority which justified the likelihood of the petitioner being released on bail. In absence of such cogent material the detention order is vitiated as per the two decisions referred above of the Apex Court. Similarly, the statements which have been recorded by the concerned police authority in respect of the offence registered against the present petitioner under Section 161 of Criminal Procedure Code were not supplied to the petitioner alongwith the grounds of detention and inspite of demand no documents were given to the petitioner which adversely affects the right of petitioner to make effective representation against the detention order and which ultimately violate the Article 22 Sub-Clause (5) of the Constitution of India. Therefore, according to my opinion, order of detention passed by the detaining authority is vitiated and required to be set aside.

##. In the result, for the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 19.10.2000 is vitiated and results into quashing and setting aside detention order, therefore, the detenue Bhanubhai Jayrambhai Mali who has been in Surat Central Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute. No order as to costs.

(H. K. RATHOD, J.)

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